

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Services, Inc. For Forbearance)	
Under 47 U.S.C. § 160(c) From Enforcement)	WC Docket No. 16-363
Of Certain Rules For Switched Access Services)	
And Toll Free Database Dip Charges)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies (“NRIC”),¹ by counsel, hereby submit to the Federal Communications Commission (“Commission”) these comments in opposition to the “Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c)” filed September 30, 2016 (the “Petition”).² For the reasons stated herein, NRIC opposes each aspect of the relief requested by AT&T Services, Inc. (“AT&T”)³ and respectfully requests that the Petition be denied.⁴

¹ The NRIC companies submitting these Comments are: Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco.

² See *Public Notice*, DA 16-1239, issued November 2, 2016 (the “*Public Notice*”).

³ NRIC makes clear that its position does not and cannot be cited as supporting so-called access stimulation efforts by some local exchange carriers (“LECs”) that the Petition references. The Commission has properly addressed the consequences of access stimulation and NRIC sees no reason to engage in questioning the wisdom of that decision or the rules the Commission has adopted in this area. See *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff’d* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. denied* (the “*Transformation Order*”) at ¶¶ 662-701; see also 47 C.F.R. § 61.3(bbb).

⁴ NRIC recognizes that the Commission’s Rules allow it to file a motion for summary denial of the Petition. See 47 C.F.R. § 1.56. NRIC has not opted for this procedural device because of the

The Commission has provided the following guidance which serves as a basis for denial of the Petition: “[T]he decision to forbear from enforcing statutes or regulations is not a simple decision, and must be based upon a record that contains *more than broad, unsupported allegations of why the statutory criteria are met.*”⁵ Likewise, the Commission has made clear that forbearance petitions cannot be used to circumvent the notice and comment rulemaking procedures under the Administrative Procedure Act (“APA”) when the result of the forbearance would be, as in the present case, the creation of new rules – namely, AT&T’s efforts to impose “bill and keep” upon all affected LEC transport, tandem-switching and toll-free database query services. In an analogous situation, the Commission stated the following:

NYNEX did not ask us merely to refrain from applying the current separations rules. Instead, it proposed use of the Commission’s forbearance authority as a means of replacing those rules with new ones without the notice and comment required by the Administrative Procedure Act, and without use of the Joint Board procedures set forth in section 410(c) of the Communications Act. The proposals contained in NYNEX’s petition would, in fact, result in significant changes to our Part 36 rules, both structurally and in terms of anticipated results. Any significant revisions to Part 36 separations rules are appropriately addressed in a rulemaking proceeding through which interested parties have the opportunity to offer constructive comment on how the Commission and the Federal-State Joint Board established in CC Docket No. 80-286, can best address the needs of all affected parties.⁶

scrutiny that NRIC requests be undertaken regarding the Petition’s substantive deficiencies outlined herein.

⁵ *In the Matter of Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, First Report and Order*, WT Docket No. 98-100, 15 FCC Rcd 17414 (2000) (“*Forbearance Guidance Order*”) at ¶ 13 (emphasis added) (quotation to other document omitted); *see also*, *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended, Report and Order*, WC Docket No. 07-267, 24 FCC Rcd 9543 (2009) at n.81.

⁶ *In the Matter of New England Telephone and Telegraph Company and New York Telephone Company Petition for Forbearance from Jurisdictional Separations Rules, Order*, AAD 96-66, 12 FCC Rcd 2308 (1997) (“*NYNEX*”) at ¶ 13.

Unquestionably, if the Petition were to be granted, the result “would, in fact, result in significant changes”⁷ to the Commission’s existing intercarrier compensation (“ICC”) rules and otherwise predetermine at least some of the outstanding issues for which the Commission has sought comment via an APA notice and comment proceeding.⁸

AT&T’s effort to pre-determine the outcomes of issues already pending before the Commission should be rejected. AT&T should not be allowed to circumvent the Commission’s *FNPRM*. If AT&T’s plea to reduce its access costs at the expense of the affected LECs and/or the customers they serve has any basis, AT&T should be required to address those pecuniary business objectives in the context of the *FNPRM*, thereby allowing the Commission the full flexibility provided under the APA to fashion the form of relief *that the Commission determines to be required by the public interest*. As of now, however, AT&T has not shown in its Petition that its self-interest can be reconciled with the Commission’s directives contained in *NYNEX* or that the APA’s notice and comment process should be circumvented where the ICC-related issues raised in the Petition can be addressed more comprehensively in the context of the *FNPRM*.

The fact that AT&T seeks rule changes applicable to transport, tandem-switching services and database queries⁹ cannot reasonably be contested. AT&T places its requests within the context of so-called access stimulation efforts by some LECs (a matter already addressed in

⁷ *Id.*

⁸ See *Transformation Order, Further Notice of Proposed Rulemaking (“FNPRM”)* at ¶¶ 1297-1310, 1314. For example, paragraphs 1303 through 1305 of the *FNPRM* addressed issues related to 8YY traffic, paragraphs 1306 through 1310 addressed transport issues and paragraph 1314 of the *FNPRM* sought comment on other flat-rated charges. See *Transformation Order, FNPRM* at ¶¶ 1303-1310, 1314. No question can seriously exist that the *FNPRM* effectively covers the same ground as that addressed in the Petition.

⁹ See Petition at 3-4, 13-23.

the *Transformation Order*¹⁰), coupled with AT&T's rendition of the Commission's ruling in the *Transformation Order* based on the Commission's anticipated results arising from its resolution of certain ICC issues.¹¹

But the Commission has properly addressed the consequence of access stimulation and adopted rules to address such activity – such as 47 C.F.R. § 61.3(bbb) – and NRIC sees no reason to question the wisdom of that decision or the rules adopted to address this area. At the same time, and in light of the highly charged rhetoric that AT&T employs,¹² one would reasonably expect that AT&T would limit its requested transport and tandem-switching relief to only those entities allegedly engaged in such access stimulation activities.¹³ *But that is simply not the case.*

Rather, AT&T employs its access stimulation rhetoric in an effort to mask the fact that its requested transport and tandem-switching relief would be applicable to “all LECs, including

¹⁰ See *Transformation Order* at ¶¶ 662-701; see also 47 C.F.R. § 61.3(bbb).

¹¹ For example, the Commission stated that “Bill-and-keep . . . is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP.” *Id.* at ¶ 34. Likewise, the Commission noted that its Staff's analysis “estimates the fraction of ICC savings that will be passed on to consumers in the form of lower prices or better value for existing prices.” *Transformation Order*, Appendix 1, ¶ 3.

¹² See Petition at 3 (AT&T alleges that “access stimulation schemes continue to flourish. . .”); 4 (AT&T contends that Interexchange carriers and ratepayers are asked to “contribute to ‘inflated profits’”); 8 (AT&T contends that current arrangements result in a “perverse economic relationship” between IXC and LECs allowing LECs to allegedly bill the IXCs “for inefficient and costly tandem and transport services”), 9 (AT&T asserts that originating access and transport-related charges have resulted in “‘arbitrage schemes’ that have consistently plagued the intercarrier compensation scheme. . . .”); 9 (“in AT&T's experience, access stimulation remains rampant” involving, according to AT&T, “billions” of minutes since 2011) (emphasis in original); 11 (AT&T alleges that “arbitrage schemes are increasingly shifting to 8YY”).

¹³ NRIC does not condone so-called “access stimulation” measures that have been previously addressed by the Commission. However, NRIC respectfully submits that the Commission must differentiate access stimulation from appropriate network management practices such as those deployed by NRIC companies in providing access services in rural Nebraska to Interexchange Carriers.

intermediate LECs, on all calls *to or from LECs engaged in access stimulation*”,¹⁴ a statement effectively made five (5) more times in the Petition.¹⁵ Thus, if AT&T’s requested relief were to be granted, any LEC in a given call path, regardless of its activities, could be required to forgo properly assessed transport and tandem-switching that the Commission permits, thus creating a new ICC rule, plain and simple.¹⁶ The same is true for the toll-free database service queries that AT&T seeks to avoid in the Petition. Although no such “bill and keep” requirements were imposed by the *Transformation Order*, any elimination of such charges as AT&T seeks would be applicable to all LECs.¹⁷

Even if certain aspects of the relief AT&T seeks are appropriately applied to access stimulation (assuming such activity is, in fact, proven), the underpinnings of the Petition are, by association (and without demonstration) effectively relying on claims of access stimulation for universal application. The mismatch between the factual bases alleged by AT&T – access stimulation engaged in by a small number of LECs -- and the breadth of the relief that AT&T seeks to apply to *all* LECs regardless of conduct is, at best, misguided. AT&T’s efforts cannot be reconciled with the Commission’s pronouncement that a petition for forbearance “must be based upon a record that *contains more than broad, unsupported allegations of why the statutory*

¹⁴ *Id.* at 3 (emphasis added).

¹⁵ *See id.* at 13; *see also id.*, Appendix A (referencing effectively same language four (4) times).

¹⁶ AT&T’s effort is to target all originating LEC transport and all originating and terminating transport and tandem-switching services provided by rate of return (“ROR”) LECs and those rural competitive LECs that compete with such ROR LECs. *See also* 47 C.F.R. § 51.907(h) (Starting July 1, 2018, “each Price Cap carrier shall, in accordance with bill-and-keep . . . revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns.”)

¹⁷ *See* Petition at 4 (“[T]he Commission should forbear from its rules allowing LECs to assess per query database dip charges on toll-free calls.”); 18; Appendix A at 2-3.

criteria are met”¹⁸ and an equally unsupported factual basis that AT&T’s relief would result in demonstrated consumer benefit, broadband deployment or IP deployment.¹⁹

But, even if AT&T can reconcile the contradiction between the limited scope of its alleged facts and the expansive nature of the relief it seeks,²⁰ AT&T’s request cannot be reconciled with the fact that the Commission anticipated its *Transformation Order* decision would address other incentives regarding access stimulation. The Commission made clear that “the access stimulation rules we adopt today are part of our comprehensive intercarrier compensation reform. That reform will, as the transition unfolds, address remaining incentives to engage in access stimulation.”²¹ Coupled with this pronouncement, the Commission’s *NYNEX* decision demonstrates that § 160 cannot properly be used as a means to affect entire segments of the LEC industry when AT&T’s requested relief is, even giving a charitable reading of the Petition, based on allegations relating to only a few LECs.

In this regard, AT&T has *also* not demonstrated that § 160(a) of the Act contemplates that mere allegations of facts – or as AT&T puts it in the context of transport and tandem-switching that, “in AT&T’s experience, access stimulation remains rampant”²² and with respect

¹⁸ *Forbearance Guidance Order*, n. 5 *supra*, at ¶ 13 (emphasis added).

¹⁹ See n. 11 *supra* and n. 27 *infra*.

²⁰ NRIC acknowledges that AT&T recites its interpretation of what the Commission asserted to be the policy underpinnings justifying bill and keep, interspersing AT&T’s own contentions regarding such underpinnings. See, e.g., Petition at 4-6. NRIC respectfully submits that such recitation cannot rationally be considered proven in the context of the Petition based on the current facts and circumstances upon which a forbearance grant must be based under current Commission precedent.

²¹ *Transformation Order* at ¶ 672.

²² Petition at 9.

to 800 database services that “arbitrage schemes are increasingly shifting to 8YY”²³ – can be the basis for any form of forbearance. These are the types of “broad, unsupported allegations of why the statutory criteria are met” that are insufficient to justify a decision to forbear.²⁴

Moreover, it is equally questionable how the public interest test under § 160(a)(3) would be served by a grant of AT&T’s relief when, again, the Commission has already pronounced that it anticipated its *Transformation Order* decision would address proven access stimulation efforts in the future.²⁵ So too, AT&T has failed to demonstrate how the public interest would be served when AT&T’s apparent construction of § 160 would eliminate the APA-sanctioned fact finding and properly established conclusions/policies left to be resolved in the *FNPRM*.²⁶ And, while AT&T pays lip service to the inadequacy of existing procedures to address its business interest – complaints, tariff challenges, civil litigation, and even a request for Commission rulemaking -- those procedures nonetheless remain available to any aggrieved party.²⁷

²³ *Id.* at 11. AT&T’s contention regarding database rate issues (*see, e.g.*, Petition at 19) is tantamount to tariff challenges.

²⁴ *Forbearance Guidance Order*, n. 5 *supra*, at ¶ 13.

²⁵ *Transformation Order* at ¶ 672.

²⁶ *See Transformation Order* at ¶ 820; *see also id.* ¶¶ 1303-1310, 1314; n. 11 *supra*. As the Commission is aware, transport of traffic requires delivering such traffic over significant distances in rural America. The *FNPRM* affords far greater decisional flexibility to the Commission than the Petition as to how to address any and all cost recovery issues associated with any additional ICC reform.

²⁷ To be sure, the record demonstrates that AT&T has not, in fact, shown that it is an aggrieved party. AT&T’s attempt to suggest that the complaint/litigation process is burdensome (*see* Petition at 10, n. 18) and thus presumably is time consuming and expensive rings hollow. AT&T states that based on the current structures, access stimulation “is also likely deterring investments in broadband and the orderly transition to IP networks.” Petition at 9. Thus, at best, AT&T admits that the alleged negative effects it states *could be* deterring investments in broadband and IP networks, not that that the current Commission-sanctioned framework *actually is deterring* investments in broadband and IP networks. *See also* n. 11, *supra*. In this regard, it could be rationally anticipated that if AT&T possessed facts to prove this contention, AT&T would have provided “chapter and verse” as to what investments *it* has foregone. No such details are provided in AT&T’s Petition.

Finally, if, for example, the public interest is being deterred by 8YY database charges or competition is adversely affected, it would be rationally expected that AT&T would reconcile its contentions with the position taken by the Alliance for Telecommunications Industry Solutions (“ATIS”). ATIS has indicated that there are “up to 48,000,000” toll free numbers open for use as well as generally seeking guidance as to how such future numbering resources should be assigned.²⁸

AT&T’s allegations of unproven facts from which it derives conclusions and then seeks relief based upon those conclusions are nothing but a “house-of-cards.” AT&T has not reconciled its requested transport, tandem-switching and 8YY database relief with the structure of § 160 and the Commission decisions outlining the parameters of § 160, nor has AT&T demonstrated that the requested relief is something other than establishing new “bill and keep” rules, thereby prejudging issues that are pending in the *FNPRM*. Further, AT&T has failed to demonstrate that it is unable to utilize other available procedural vehicles to address what it perceives to be improper conduct.

²⁸ See Petition Requesting Bureau Action to Revise Toll Free Codes Opening Methodology, CC Docket No. 95-155, filed April 5, 2016 (“*ATIS Petition*”) at 6,1; see also *Public Notice*, WC Docket No. 94-155, DA 16-445, released May 4, 2016. ATIS states that it is “a global standards development and technical planning organization that develops global technical and operations standards and solutions for information, entertainment and communications technologies.” *ATIS Petition* at 1.

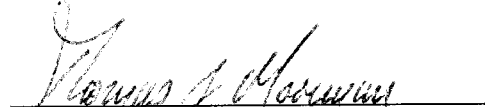
A critical review of the Petition leads to the conclusion that AT&T's arguments are unsustainable, and therefore, the relief AT&T seeks in its Petition should be denied in its entirety.

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Respectfully submitted,

Nebraska Rural Independent Companies

By:



Thomas J. Moorman
tmoorman@woodsaitken.com
WOODS & AITKEN LLP
5151 Wisconsin Ave. NW, Suite 310
Washington, D.C. 20016
(202) 944-9502

Paul M. Schudel
pschudel@woodsaitken.com
Monica L. Freeman
mfreeman@woodsaitken.com
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500

Its Attorneys